



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

EPA-R08-OAR-2012-0347; FRL- 9839-1

Approval and Promulgation of State Implementation Plans; State of Montana; Interstate Transport of Pollution for the 2006 PM_{2.5} NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to partially approve and partially disapprove portions of a State Implementation Plan (SIP) submission from the State of Montana that are intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (“Act” or “CAA”) for the 2006 fine particulate matter (“PM_{2.5}”) National Ambient Air Quality Standards (“NAAQS”). Specifically, EPA is partially approving and partially disapproving the portion of the Montana SIP submission that addresses the CAA requirement prohibiting emissions from Montana sources from significantly contributing to nonattainment of the 2006 PM_{2.5} NAAQS in any other state or interfering with maintenance of the 2006 PM_{2.5} NAAQS by any other state. EPA is also partially approving and partially disapproving the portion of Montana’s submission that addresses the CAA requirement that SIPs contain provisions to insure compliance with specific other CAA requirements relating to interstate and international pollution abatement. These partial disapprovals will not trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate transport requirements as EPA is determining that the existing SIP is adequate to meet the specific CAA requirements.

EFFECTIVE DATE: This final rule is effective [FEDERAL REGISTER: insert date 30 days after publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2012-0347. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P-AR, 1595 Wynkoop, Denver, Colorado 80202-1129, (303) 312-7104, clark.adam@epa.gov.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental

Protection Agency.

- (iii) The initials NAAQS mean or refer to National Ambient Air Quality Standards.
- (iv) The initials SIP mean or refer to State Implementation Plan.
- (v) The initials MDEQ mean or refer to the Montana Department of Environmental Quality.
- (vi) The words Montana and State mean the State of Montana.

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I. Background

On October 17, 2006 EPA promulgated a new NAAQS for PM_{2.5}, revising the level of the 24-hour PM_{2.5} standard to 35 µg/m³ and retaining the level of the annual PM_{2.5} standard at 15 µg/m³. (71 FR 61144). By statute, SIPs meeting the “infrastructure” requirements of CAA sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Among the infrastructure requirements of section 110(a)(2) are the “interstate transport” requirements of section 110(a)(2)(D).

CAA section 110(a)(2)(D)(i) identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of Montana, EPA is addressing the first two elements of section 110(a)(2)(D)(i) with respect to the 2006 PM_{2.5} NAAQS.¹ The first element of section 110(a)(2)(D)(i) requires that each SIP for a new or

¹This action does not address the two elements of the transport SIP provision (in CAA section 110(a)(2)(D)(i)(II)) regarding interference with measures required to prevent significant deterioration of air quality or to protect

revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” of the NAAQS in another state. The second element of CAA section 110(a)(2)(D)(i) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will “interfere with maintenance” of the applicable NAAQS in any other state.

EPA is also addressing the requirements of section 110(a)(2)(D)(ii) with respect to the 2006 PM_{2.5} NAAQS. Section 110(a)(2)(D)(ii) requires each SIP to contain adequate provisions to insure compliance with the applicable requirements of sections 126 and 115 of the Act. Section 126 pertains to notification to nearby states and petitions from states to EPA regarding interstate transport of pollution. Section 115 pertains to international transport of pollution.

On February 10, 2010, the Montana Department of Environmental Quality (MDEQ) provided a submission to EPA certifying that Montana’s SIP is adequate to implement the 2006 PM_{2.5} NAAQS for all the infrastructure requirements of CAA section 110(a)(2). This submission included a brief analysis to support the conclusion that Montana’s SIP meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for this NAAQS.²

On May 13, 2013 (78 FR 27883), EPA proposed to partially approve and partially disapprove MDEQ’s February 2010 submission with regard to the infrastructure requirements of CAA section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii). As explained in that action, we proposed to partially disapprove these elements of Montana’s submission because the submission did not include any technical analysis to support its conclusion regarding section 110(a)(2)(D)(i)(I), and

visibility in another state. We will act on these elements in a separate rulemaking.

² MDEQ’s certification letter, dated February 10, 2010, is included in the docket for this action.

did not to address section 110(a)(2)(D)(ii). (78 FR 27885) However, we also proposed to partially approve elements 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) of Montana's submission based on our supplemental analysis, through which we concluded that the existing SIP for the State of Montana is adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii). The details of our supplemental analysis are provided in our notice of proposed rulemaking.

II. Response to Comments

EPA received one anonymous public comment on the proposed action. The commenter expressed concern about the potential for particulate matter pollution from what the commenter called the "slash and burn policies" of the U.S. Forest Service (USFS). The commenter alleged that the USFS had created an air pollution violation, but did not identify any particular provision of the Act or the Montana SIP that the USFS had violated.

As discussed in our proposal notice, the scope of our action was to evaluate Montana's submission that the Montana SIP is adequate to prevent sources in Montana from significantly contributing to nonattainment or interfering with maintenance of the 2006 PM_{2.5} NAAQS in any other state. To the extent that the commenter is concerned that the SIP is inadequate with respect to interstate transport impacts of PM_{2.5} created by intentional burns by the USFS, EPA disagrees with that concern. Our technical analysis confirmed that emissions from Montana in total, including emissions from prescribed burns, do not significantly contribute to nonattainment or interfere with maintenance of the 2006 PM_{2.5} NAAQS in any other state. The commenter did not identify any issues with this analysis.

The commenter also expressed concern that the Regulations.gov site was inaccessible on a particular day. In our notice, we provided alternative means of commenting: email, fax, postal

mail, and hand delivery. We also provided an address, phone number, and email contact for further information. However, the commenter did not attempt to use any of these alternative means to comment or to inform us of the problem. While we acknowledge the commenter's concerns, we find that the public had adequate opportunity to comment on our action.

III. Final Action

EPA is partially approving and partially disapproving the 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) portions of Montana's February 10, 2010 submission. We are partially disapproving the 110(a)(2)(D)(i)(I) portion of the submission because it relies on irrelevant factors and lacks any technical analysis to support the State's conclusion with respect to interstate transport. However, we are also partially approving this portion of the submission based on EPA's supplemental evaluation of relevant technical information, which supports a finding that emissions from Montana do not significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour PM_{2.5} NAAQS in any other state and that the existing Montana SIP is, therefore, adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS. We conclude that any FIP obligation resulting from this partial disapproval is satisfied by our determination that there is no deficiency in the SIP to correct. This disapproval also does not require any further action on Montana's part given EPA's conclusion that the SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 24-hour PM_{2.5} NAAQS.

Similarly, EPA is partially disapproving the 110(a)(2)(D)(ii) portion of Montana's submission because it fails to address or discuss this CAA requirement. However, we are partially approving this portion of the submission based on the conclusion that the State's existing SIP is adequate to meet the requirements of CAA section 110(a)(2)(D)(ii) for the 2006

24-hour PM_{2.5} NAAQS. For similar reasons to those noted above for the 110(a)(2)(D)(i)(I) requirement, the partial disapproval of the submission for the 110(a)(2)(D)(ii) requirement does not require any further action from Montana or create any additional FIP obligation for EPA.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law that meets Federal requirements and disapproves state law that does not meet Federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 12, 2013.

Shaun L. McGrath,
Regional Administrator,
Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart BB - Montana

2. Section 52.1393 is amended by revising section heading, designating existing paragraph as (a) and adding paragraph (b) to read as follows:

§ 52.1393 Interstate transport requirements.

* * * * *

(b) On February 10, 2010, Montana Governor Brian Schweitzer submitted a letter certifying, in part, that Montana's SIP is adequate to meet the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 PM_{2.5} NAAQS.